

REMARKS

Reconsideration of this application is respectfully requested.

Claims 66-87 are pending in this application. Applicants thank the Examiner for acknowledging the claim for foreign priority.

Rejections under 35 U.S.C. §§ 102(a) and 103(a)

The Office rejected claims 66-87 under 35 U.S.C. § 102(a), as anticipated by, or under 35 U.S.C. § 103(a), as obvious over, Suerbaum et al., "Cloning, Sequencing, and Mutagenesis of the *H. pylori* *flbA* Gene - a Homolog of the *lcrD/flbF/invA* Family of Genes Associated with Motility and Virulence," *Am. J. of Gastroent.*, August 15, 1994, 89(8): 1331. (Office Action at Item 5.)

Similarly, the Office rejected claims 66-87 under 35 U.S.C. § 102(a), as anticipated by, or under 35 U.S.C. § 103(a), as obvious over, Suerbaum et al., "Cloning, Expression, and Mutagenesis of the *H. pylori* *flbA* Gene - a Homolog of the *lcrD/flbF* Family of Genes Associated with Motility and Virulence," *Abstracts of the Gen. Meeting of American Society of Microbiol.*, p. 181, vol. 95, May 21-25, 1995. (Office Action at Item 6.)

Applicants respectfully traverse.

The instant application is based on French priority application 95 08068, filed August 7, 1995. Applicants have asserted the benefit of their priority date, which has been acknowledged by the Office. (Office Action at Item 1.)

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com

The authors of both of the cited Suerbaum et al. Abstracts include Sebastian Suerbaum and Agnés Labigne, the named inventors of the instant application. As documented in the 37 C.F.R. § 1.132 Declaration filed herewith, the other two authors of the Suerbaum Abstracts, namely, A. Schmitz and C. Josenhans, are not inventors. A. Schmitz and C. Josenhans merely coauthored the attached publications.

35 U.S.C. § 102(a) states that a person shall be entitled to a patent unless the invention was known or used **by others**. . . ." (35 U.S.C. § 102(a), emphasis added.) However, the inventive entity of the cited references and the instant application are the same. Consequently, these references are not effective references, and Applicants therefore respectfully request withdrawal of the 35 U.S.C. §§ 102(a) and 103(a) rejections.

Rejection under 35 U.S.C. § 102(f)

The Office rejected claims 66-87 under 35 U.S.C. § 102(f), alleging that the applicant did not invent the claimed subject matter. (Office Action at Item 7.) The Office alleges that the French priority application 95 08068 and the instant application recite different inventive entities. Applicants respectfully traverse on the grounds that the Office is mistaken.

The Office observed that the French priority application 95 08068 names Sebastian Suerbaum and Agnés Labigne as inventors. Applicants assert that the instant application also names Sebastian Suerbaum and Agnés Labigne as inventors. A copy of the Declaration, signed by both Sebastian Suerbaum and Agnés Labigne, is attached hereto.

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com

Additionally, the Office noted that the authors of the Suerbaum Abstracts, discussed above, include S. Suerbaum, A. Schmitz, C. Josenhaans, and A. Labigne. Because the Office appears to equate abstract authorship with inventorship, the Office alleges that the record reflects an additional set of inventors that includes S. Suerbaum, A. Schmitz, C. Josenhaans, and A. Labigne. (Office Action at Item 7.) As documented in the 37 C.F.R. § 1.132 Declaration filed herewith, the other two authors of the Suerbaum abstracts, namely, A. Schmitz and C. Josenhans, are not inventors. A. Schmitz and C. Josenhans merely coauthored the attached publications. Applicants therefore respectfully request withdrawal of the 35 U.S.C. § 102(f) rejection.

Applicants courteously request the timely examination of this application and the allowance of the pending claims 66-81. Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: September 22, 2003

By: Rebecca McNeill
Reg. No. 43,796
Kenneth J. Meyers
bdr. Reg. No. 25,146
Phone: (202)408-4033
Fax: (202)408-4400
Email: ken.meyers@finnegan.com

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com